

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 17, 2025**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES,

Plaintiff,

v.

IVAN GUTIERREZ-LOPEZ,

Defendant.

No. 2:22-CR-0029-RLP

ORDER GRANTING MOTION  
TO DISMISS INDICTMENT

Before the Court is Ivan Gutierrez-Lopez's motion to dismiss the Indictment, charging him with being an alien in the United States after deportation in violation of 8 U.S.C. § 1326. ECF No. 30. A hearing was held on this matter on July 15, 2025. Joel Baumann of the Federal Defenders of Eastern Washington and Idaho appeared on behalf of Mr. Gutierrez-Lopez. The Government was represented by Assistant United States Attorney Michael Ellis. Mr. Gutierrez-Lopez was present and assisted by federally certified interpreter Bea Rump.

Mr. Gutierrez-Lopez argues the Indictment must be dismissed because it is predicated on an invalid order of removal. To collaterally attack an order of

1 removal in this context, a defendant must satisfy three prerequisites: (1) exhaustion  
2 of available administrative remedies, (2) deprivation of judicial review, (3) and  
3 fundamental unfairness. 8 U.S.C. § 1326(d). The Court agrees with Mr. Gutierrez-  
4 Lopez that all three criteria have been met. Thus, the motion to dismiss is granted.

## 5 BACKGROUND

6 Ivan Gutierrez-Lopez is a citizen of Mexico. He entered the United States in  
7 2001 at the age of 18. ECF No. 32 at 4. In 2003, Mr. Gutierrez was convicted of  
8 Taking a Vehicle Without Owner's Consent in violation of California Code §  
9 10851 and was sentenced to 14 months in custody. ECF No. 32 at 8. Upon  
10 completion of his sentence in March 2004, Mr. Gutierrez-Lopez was released to  
11 the custody of Immigration and Customs Enforcement in California.

12 On March 25, 2004 at 9:41 a.m., Special Agent Ulises Solario prepared a  
13 Record of Deportable/Inadmissible Alien, Form I-831 for Mr. Gutierrez-Lopez.  
14 ECF No. 33-1. The English-language form included information about Mr.  
15 Gutierrez-Lopez's alienage and criminal history. The form stated Mr. Gutierrez-  
16 Lopez would be processed for administrative removal. *Id.* at 1.

17 The I-831 form contains some hand-written notes and a fingerprint. Included  
18 in the notes are the following statements, "Claims no fear of return to Mexico" and  
19 "Claims no appeal filed for criminal conviction." *Id.* The I-831 form states it was  
20 received by Deputy IHP Director Paul Leonardi at 10:08 a.m. *Id.*

1 At 3:20 p.m. on March 25, Director Leonardi signed off on a Notice of  
2 Intent to Issue a Final Administrative Removal Order, Form I-851. ECF No. 32 at  
3 11. The English-language form advised that Mr. Gutierrez-Lopez was deportable  
4 because he had “been convicted of an aggravated felony.” *Id.* The form stated that  
5 Mr. Gutierrez-Lopez had the right to be represented by counsel at no expense to  
6 the government. *Id.* It also stated Mr. Gutierrez-Lopez had 10 days to respond to  
7 the notice of removal and that, in a response, Mr. Gutierrez-Lopez could make the  
8 following requests:

9 an extension of time; rebut the charges stated above (with supporting  
10 evidence); request an opportunity to review the government’s  
11 evidence; admit deportability; designate the country to which you  
12 choose to be removed in the event that a final order of removal is  
13 issued ...; and/or, if you fear persecution in any specific country or  
14 countries on account of race, religion, nationality, membership in a  
15 particular social group, or political opinion or, if you fear torture in  
16 any specific country or countries, you may request withholding of  
17 removal ... or withholding/deferral of removal.

14 *Id.* Finally, the form advised Mr. Gutierrez-Lopez he could “seek judicial review of  
15 any final administrative order by filing a petition for review within 14 calendar  
16 days after the date such final administrative order is issued, or you may waive such  
17 appeal by stating, in writing, your desire not to appeal.” *Id.*

18 Agent Solario signed an English-language proof of service form, stating he  
19 served the I-851 Form on Mr. Gutierrez-Lopez in Fresno, California and that he  
20 explained the form to Mr. Gutierrez-Lopez in the “SPANISH/ENGLISH”

1 language. *Id.* at 12. Mr. Gutierrez-Lopez signed the proof of service form below  
2 the following statement, “I Acknowledge that I Have Received this Notice of  
3 Intent to Issue a Final Administrative Removal Order.” *Id.* Mr. Gutierrez-Lopez’s  
4 portion of the form also contains a fingerprint. *Id.*

5 The proof of service form included a section that Mr. Gutierrez-Lopez could  
6 have filled out had he wished to contest deportability. Four check-boxes were  
7 provided that specified possible grounds:

- 8 ☐ I am a citizen or national of the United States.  
9 ☐ I am a lawful permanent resident of the United States.  
10 ☐ I was not convicted for the criminal offense described in allegation  
11 number 6 above.  
12 ☐ I am attaching documents in support of my rebuttal and request for  
13 further review.

14 ECF No. 32 at 12. Mr. Gutierrez did not fill out this portion of the form.

15 Instead of filling out the portion of the form regarding contesting  
16 deportability, Mr. Gutierrez-Lopez signed the portion of the form stating he did not  
17 wish to contest or request withholding of removal. Mr. Gutierrez-Lopez checked a  
18 box that stated:

19 I admit the allegations and charge in this Notice of Intent. I admit that  
20 I am deportable and acknowledge that I am not eligible for any form  
of relief from removal. I waive my right to rebut and contest the above  
charges and my right to file a petition for review of the Final Removal  
Order. I do not wish to request withholding or deferral of removal. I  
wish to be removed to \_\_\_\_\_.<sup>1</sup>

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<sup>1</sup> The area for designating a country of removal was left blank.

1 *Id.* Mr. Gutierrez-Lopez also checked a box stating he waived the 14-day period  
2 for execution of the Final Removal Order. *Id.* Mr. Gutierrez-Lopez and Agent  
3 Solario signed the form at 3:25 p.m. *Id.* The signature portion of the form also  
4 contains a fingerprint. *Id.*

5 A Final Administrative Removal Order was issued against Mr. Gutierrez-  
6 Lopez on March 25, 2004 in Bakersfield, California. ECF No. 33-2. Agent Solario  
7 signed a certificate of service, verifying that he had served the final administrative  
8 removal order on Mr. Gutierrez-Lopez. *Id.* A warrant for removal was issued and  
9 executed later that same day. ECF No. 32 at 14-15.

10 Mr. Gutierrez-Lopez was found back in the United States in 2010. He was  
11 issued a reinstatement of his prior order of removal and removed to Mexico on  
12 October 18, 2010. ECF No. 33-5, ECF No. 41.

13 Mr. Gutierrez-Lopez again located in the United States in August 2021, at  
14 which time he was charged with Second Degree Murder in Spokane County. *See*  
15 ECF No. 1, ECF No. 10 at 3. Because Mr. Gutierrez-Lopez complained of memory  
16 issues secondary to a previous traumatic brain injury, he underwent a competency  
17 evaluation and was found competent to stand trial. ECF No. 33-8. Mr. Gutierrez-  
18 Lopez ultimately pleaded guilty to First Degree Manslaughter and Second Degree  
19 Unlawful Firearm Possession in Spokane County and was sentenced to 14 months  
20 imprisonment. ECF No. 33-9. A handwritten note on the Judgment under Criminal

History indicates Mr. Gutierrez-Lopez “does not recall either [prior] conviction.”  
*Id.* at 3.

In March 2022, Mr. Gutierrez-Lopez was indicted on one count of Alien in the United States After Deportation in violation of 8 U.S.C. § 1326. ECF No. 1. The Indictment alleges both the 2004 and 2010 removals as predicates for the charge. *Id.*

### MOTION TO DISMISS

Mr. Gutierrez-Lopez moves to dismiss the Indictment, arguing his prior removal order is invalid. Mr. Gutierrez-Lopez contends his administrative removal based on an aggravated felony was fundamentally unfair because in 2021 the Ninth Circuit determined that his prior crime of Taking a Vehicle Without Owner’s Consent in violation of California Code § 10851, does not qualify as an aggravated felony. *See Lopez-Marroquin v. Garland*, 9 F.4th 1067 (9th Cir. 2021). Mr. Gutierrez-Lopez further claims that, given the circumstances of his case, he had no ability to challenge the basis for his removal at the time of his 2004 proceedings and that he was improperly deprived of judicial review. Mr. Gutierrez-Lopez recognizes he was also removed in 2010. However, because that removal was based on a reinstatement of the 2004 administrative removal order, its validity rests on the validity of the 2004 order. *See United States v. Arias-Ordonez*, 597 F.3d

1 972, 982 (9th Cir. 2010), *abrogated on other grounds as recognized in United*  
2 *States v. Portillo-Gonzalez*, 80 F.4th 910, 918 (9th Cir. 2023).

3 Mr. Gutierrez-Lopez has submitted a declaration in support of his motion.  
4 He states he can speak and read Spanish but cannot read or understand English.  
5 ECF No. 32 at 4. He reports that after serving his California sentence for theft of a  
6 motor vehicle, he was transported to San Diego. In March 2004, he met with an  
7 immigration agent along with many other undocumented people. The agent met  
8 with each person for a few minutes. The agent told Mr. Gutierrez-Lopez he was  
9 being deported. Mr. Gutierrez-Lopez claims the agent did not explain that he had  
10 the right to an attorney. According to Mr. Gutierrez-Lopez, the agent said that if he  
11 signed, he would be quickly released to Mexico. The agent did not explain Mr.  
12 Gutierrez-Lopez was being deported for an aggravated felony. He did not tell Mr.  
13 Gutierrez-Lopez that he could challenge this characterization of his prior felony or  
14 tell him that he could submit documents or other evidence to challenge deportation.  
15 Mr. Gutierrez-Lopez claims the agent did not translate the forms provided, he  
16 simply instructed Mr. Gutierrez-Lopez provide his signature.

17 The Government disputes the legal and factual bases of Mr. Gutierrez-  
18 Lopez's motion. In support of its position, the Government has filed a declaration  
19 from Agent Solario, who is now retired. ECF No. 33-4. Agent Solario states he has  
20 no independent recollection of Mr. Gutierrez-Lopez. However, he is familiar with

1 his general practices and, based on his review of the paperwork, there is no  
2 indication he deviated from his general practices in Mr. Gutierrez-Lopez's case.  
3 According to Agent Solario, it was his standard practice to meet with detained  
4 individuals in their holding cells. Agent Solario is fluent in Spanish. If a detained  
5 person only spoke Spanish, Agent Solario "would explain the I-851 form in  
6 Spanish." *Id.* at 2. It was Agent Solario's standard practice to explain the rights to  
7 be represented by counsel, the deadline for responding to the Notice of Intent, and  
8 the right to seek judicial review of a final order of removal. *Id.* Agent Solario  
9 would ask for the individual's signature and fingerprint to acknowledge receipt of  
10 the I-851 form and to confirm how they wished to respond to the Notice of Intent.  
11 *Id.* If an individual did not wish to contest removal, it was not uncommon for them  
12 to be removed the same day. Agent Solario's declaration does not specify that he  
13 would have provided any information to an individual that is not set forth in the I-  
14 851 form.

### 15 ANALYSIS

16 Mr. Gutierrez-Lopez is charged with illegal re-entry, in violation of 8 U.S.C.  
17 § 1326. Under that statute, a defendant may not collaterally challenge the validity  
18 of a prior order of removal unless:

19 (1) the alien exhausted any administrative remedies that may have  
20 been available to seek relief against the order;



(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and  
(3) the entry of the order was fundamentally unfair.

8 U.S.C. § 1326(d).

The parties dispute all three components of § 1326(d). Each is addressed in turn.

### 1. Exhaustion of Available Administrative Remedies

The first requirement of § 1326(d) is that the alien must have exhausted available administrative remedies. Mr. Gutierrez-Lopez contends that this requirement is met because there were no available administrative remedies that would have allowed him to challenge whether he was subject to deportation as an aggravated felon. The Court agrees.

Section 1326(d) requires the Court to examine the issue of exhaustion of administrative remedies separately from the other two criteria. *See United States v. Palomar-Santiago*, 593 U.S. 321, 141 S.Ct. 1615 (2021). Even if a defendant's immigration proceedings were marred by a legal error that might implicate fundamental fairness as contemplated by § 1326(d)(3), exhaustion is still required. A substantive legal error in the immigration proceedings does not "excuse the noncitizen's failure to comply with a mandatory exhaustion requirement if further administrative review, and then judicial review if necessary, could fix that very error." *Id.* at 322.

1 While exhaustion is the rule, the text of § 1326(d)(1) specifies that  
2 exhaustion is only required when administrative remedies are “available.” An  
3 administrative remedy is not “available” if it operates as a “simple dead end.” *Ross*  
4 *v. Blake*, 578 U.S. 632, 633, 136 S.Ct. 1850 (2016). Implicit in *Palomar-Santiago*  
5 is the recognition that if an administrative remedy is unavailable, and effectively a  
6 legal dead end, if it cannot “fix [the] very error” that rendered the order of removal  
7 unlawful. *Palomar-Santiago*, 593 U.S. at 322.

8 Mr. Gutierrez-Lopez persuasively argues that he has satisfied the exhaustion  
9 requirement because there were no administrative remedies available to fix the  
10 error in his case. Specifically, Mr. Gutierrez-Lopez argues that his order of  
11 removal was unlawful because his prior felony conviction was improperly  
12 classified as an aggravated felony. Yet the administrative removal process used in  
13 his case did not allow him any administrative options for raising this challenge.  
14 Under the pertinent immigration regulations, an administrative response to a final  
15 order of removal is limited to: (1) designation of choice country for removal; (2)  
16 submission of a written response rebutting the allegations supporting the charge;  
17 (3) requesting the opportunity to review the Government’s evidence and/or (4)  
18 request withholding of removal. 8 C.F.R. § 238.1(c)(1). This is consistent with the  
19 four check-boxes listed on Mr. Gutierrez-Lopez’s I-851 form. ECF No. 32 at 11.  
20 While one of the possible avenues for administrative challenge was to rebut the

1 allegations for removal, the regulations provide only for consideration of a genuine  
2 issue of material fact, not legal conclusions. 8 C.F.R. 238.1(d)(2)(ii)(A). Again,  
3 this limitation is consistent with the language in the four check-boxes on Mr.  
4 Gutierrez's form. ECF No. 32 at 11. Thus, Mr. Gutierrez-Lopez had no  
5 administrative option for challenging the conclusion that his offense constituted an  
6 aggravated felony.

7 Because Mr. Gutierrez-Lopez had no administrative remedy available, there  
8 was no remedy to exhaust. Mr. Gutierrez-Lopez therefore meets the requirement of  
9 8 U.S.C. §1326(d)(1).

## 10 2. Deprivation of opportunity for judicial review

11 Unlike what was true of administrative remedies, judicial review provided  
12 Mr. Gutierrez-Lopez the possibility of challenging the designation of his prior  
13 conviction as an aggravated felony. Although at the time of his 2004 removal, 8  
14 U.S.C. § 1252(a)(2)(C) (2004) had stripped the judiciary of "jurisdiction to review  
15 any final order of removal against an alien who [was] removeable by reason of  
16 having committed" an aggravated felony, case law made clear that courts retained  
17 jurisdiction to determine their jurisdiction. *Ye v. INS*, 214 F.3d 1128, 1131 (9th Cir.  
18 2000); *see also Zavaleta-Gallegos v. INS*, 261 F.3d 951, 954 (9th Cir. 2001)  
19 ("appellate courts retain jurisdiction to determine whether a petitioner is an alien  
20 removable by reason of having been convicted of one of the enumerated offenses")

(citations, alteration, and internal quotation marks omitted). Indeed, Mr. Gutierrez-Lopez's I-851 form stated that he had the right to seek judicial review within 14 days. ECF No. 32 at 11.

Mr. Gutierrez-Lopez argues that, regardless of the legal availability of judicial review, he was deprived of the opportunity for judicial review as contemplated by 8 U.S.C. § 1326(d)(2) because he never validly waived his right to judicial review. *See Mendoza-Lopez*, 481 U.S. 828, 840, 107 S.Ct. 2148 (1987).

When a defendant challenges the validity of a waiver of the right to judicial review, the Government is tasked with establishing a valid waiver.<sup>2</sup> This requires

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<sup>2</sup> The Government argues *Palomar-Santiago* requires a Defendant to make a threshold showing that a waiver is not voluntary in order to trigger the Government's burden. The Government cites no authority for this argument. To trigger the Government's burden of proving a voluntary waiver, the Ninth Circuit has recognized that a defendant need only "contest[ ] the validity of his waiver." *United States v. Gomez*, 757 F.3d 885, 893 (9th Cir. 2014). In any event, Mr. Gutierrez-Lopez has filed a declaration challenging the voluntariness of his waiver. The facts recited in the declaration constitute more than a vague claim that the waiver was involuntary. They instead provide a specific basis for questioning voluntariness. The fact that the Government has been able to produce some facts

1 the Government to “prove by clear and convincing evidence that the alien received  
2 adequate advisement of the consequences of his waiver of appeal.” *United States v.*  
3 *De La Mora-Cobian*, 18 F.4th 1141, 1148 (9th Cir. 2021) (citations and internal  
4 quotations omitted).

5 Citing *United States v. Valdivia-Flores*, 876 F.3d 1201 (9th Cir. 2017),  
6 *overruled on other grounds by Alfred v. Garland*, 64 F.4th 1025 (9th Cir. 2023),  
7 Mr. Gutierrez-Lopez argues the Government cannot meet its burden because the I-  
8 851 form used by Agent Solario violates due process. As was the case in *Valdivia-*  
9 *Flores*, the form used by Agent Solario did not inform Mr. Gutierrez-Lopez that  
10 “he could refute, through either an administrative or judicial procedure, the legal  
11 conclusion underlying his removability.” *Id.* at 1206. Instead, the list of options on  
12 the I-851 form included a list of check boxes and “the only check box relevant to  
13 the conviction itself only allowed” the alien to challenge “that he ‘was not  
14 convicted of the criminal offense described.’” *Id.*

15  
16  
17 \_\_\_\_\_  
18 questioning Mr. Gutierrez-Lopez’s credibility does not mean that the  
19 Government’s burden to prove voluntariness has not been triggered. Indeed, one  
20 way that the Government can attempt to meet its burden is by producing facts that  
call into question the defendant’s credibility.

1 The Government has proffered evidence that Agent Solario met with Mr.  
2 Gutierrez-Lopez and reviewed the I-851 form with him. According to his  
3 declaration, Agent Solario would have translated the I-851 form into Spanish for  
4 Mr. Gutierrez-Lopez. ECF No. 32 at 12. Agent Solario also would have the right to  
5 representation of counsel and the right to seek judicial review of a final order of  
6 removal. ECF no. 32 at 11.

7 The Government's proffer is inadequate because nowhere in his declaration  
8 does Agent Solario indicate that he would have explained that judicial review was  
9 broader than administrative review and would have allowed Mr. Gutierrez-Lopez  
10 to challenge the legal characterization of his prior conviction. Given that the check  
11 boxes on the removal form only allowed Mr. Gutierrez-Lopez to seek review of the  
12 fact of his prior conviction, not its legal characterization, the plain wording of the  
13 I-851 form, as interpreted by Agent Solario, suggested Mr. Gutierrez-Lopez did  
14 not have the right to seek judicial review. Under *Valdivia-Flores*, the Government  
15 has not shown a valid waiver.

16 The Supreme Court's decision in *Palomar-Santiago* does not undermine  
17 *Valdivia-Flores*'s rule regarding the requirements for a considered and intelligent  
18 waiver of the right to judicial review. In *United States v. Valdivias-Soto*, 112 F.4th  
19 713, 725 (9th Cir. 2024), the Ninth Circuit made clear that the Government's  
20 burden to prove a valid waiver of judicial review remains applicable post-*Palomar-*

1 *Santiago*. The impact of *Palomar-Santiago* on the waiver context is that misadvice  
2 as to an immigrant’s eligibility for relief from deportation will not render a waiver  
3 of judicial review invalid. *Valdivias-Soto*, 112 F.4th at 727-28. After all, the nature  
4 of the right of judicial review is to correct a decision-maker’s substantive errors.  
5 *Id.* But if an immigration officer or an immigration form misleads an immigrant  
6 about the availability to “*apply*” for relief, then the Government cannot carry its  
7 burden of establishing a waiver of the right to review. *See id.* at 727.

8 Here, the I-851 form was misleading as to the availability of relief from the  
9 order of removal. There is no evidence that Agent Solario did anything to disabuse  
10 Mr. Gutierrez-Lopez of the form’s misimpression. Given this context, the  
11 Government cannot establish that Mr. Gutierrez-Lopez’s waiver of the right to  
12 judicial review was “considered and intelligent.” *Valdivia-Flores*, 876 F.3d at  
13 1206.

### 14 3. Fundamental unfairness

15 The third requirement of §1326(d) is met if entry of the removal order was  
16 fundamentally unfair. The fundamental unfairness requirement is met where the  
17 defendant shows that defects in the removal proceeding deprived him of due  
18 process and he suffered prejudice as a result. *See United States v. Nunez*, 140 F.4th  
19 1157, 1167 (9th Cir. 2025). Removal on an improper basis establishes prejudice in  
20 any context. *United States v. Aguilera-Rios*, 769 F.3d 626, 630 (9th Cir. 2014).

1 The parties agree that under the Ninth Circuit’s decision in *Lopez-*  
2 *Marroquin v. Garland*, Mr. Gutierrez-Lopez’s conviction for Taking a Vehicle  
3 Without Owner’s Consent in violation of § 10851 of the California Vehicle Code is  
4 no longer considered an aggravated felony. 9 F.4th 1067, 1074 (9th Cir. 2021). Mr.  
5 Gutierrez-Lopez contends that because he was not convicted of an aggravated  
6 felony, he was never removeable as charged. He therefore argues that the  
7 administrative order prejudiced him and meets the fundamental unfairness  
8 requirement of § 1326.

9 The Government acknowledges the usual rule that statutory interpretation  
10 decisions are retroactive, *see United States v. Aguilar-Rios*, 760 F.3d 626, 633 (9th  
11 Cir. 2014), but contends that any hypothetical appeal by Mr. Gutierrez-Lopez in  
12 2004 would not have changed the result because as recently as 2013, the Ninth  
13 Circuit held that Mr. Gutierrez-Lopez’s underlying offense was an aggravated  
14 felony. *See Duanas-Alvarez v. Holder*, 733 F.3d 812 (9th Cir. 2013).

15 The Government’s position fails to recognize that an alien need only  
16 establish “plausible” grounds for relief from removal. *United States v. Barajas-*  
17 *Alvarado*, 655 F.3d 1077, 1089 (9th Cir. 2011) (citation omitted). Here, it is at  
18 least *plausible* that had Mr. Gutierrez-Lopez appealed, he would have been able to  
19 convince the Ninth Circuit to correctly interpret the law. Prejudice is therefore  
20 established. It does not matter that Mr. Gutierrez-Lopez might have been subject to



1 removal on grounds other than those asserted by in the Notice of Intent to Issue a  
2 Final Administrative Removal Order. *United States v. Ochoa-Oregel*, 904 F.3d  
3 682, 686 (9th Cir. 2018).

#### 4 4. The 2010 Reinstatement Order

5 The Government argues that regardless of the problems with Mr. Gutierrez-  
6 Lopez’s 2004 order of removal, this prosecution can proceed based on the 2010  
7 order of reinstatement. *See* ECF No. 41. The Court disagrees. Under current law,  
8 the validity of a reinstatement order is controlled by the underlying order. *See*  
9 *United States v. Arias-Ordonez*, 597 F.3d 972, 982 (9th Cir. 2010), *abrogated on*  
10 *other grounds as recognized in United States v. Portillo-Gonzalez*, 80 F.4th 910,  
11 918 (9th Cir. 2023) (“a successful collateral attack on a removal order precludes  
12 reliance on a reinstatement of that same order in a criminal proceeding for illegal  
13 reentry”). The Government claims that this line of cases was effectively overruled  
14 by the Supreme Court’s decision in *Palomar-Santiago*. However, *Palomar-*  
15 *Santiago* did not address reinstatement orders. Thus, this Court remains bound by  
16 Ninth Circuit authority. Furthermore, the 2010 reinstatement order suffers from the  
17 same flaws as the 2004 order. The 2010 reinstatement order did not provide for  
18 administrative remedies that would have allowed Mr. Gutierrez-Lopez to challenge  
19 the legal characterization of his prior conviction. Furthermore, the 2010  
20 reinstatement order does not provide any sort of notice of right to judicial review

1 or waiver of the right that might overcome the misleading nature of the notice of  
2 judicial review set forth in the 2004 paperwork. *See* ECF No. 41.

3 **CONCLUSION**

4 Mr. Gutierrez-Lopez has satisfied all three requirements for a collateral  
5 attack under 8 U.S.C. § 1326(d). He has satisfied the exhaustion requirement  
6 because there were no available administrative remedies. He was deprived of the  
7 opportunity for judicial review because his waiver of judicial review was not valid.  
8 And his order of removal was fundamentally unfair because he should have never  
9 been removed as charged.

10 **IT IS ORDERED:**

- 11 1. Defendant's Motion to Dismiss, **ECF No. 30**, is **GRANTED**.  
12 2. The Indictment, **ECF No. 1**, is **DISMISSED WITH PREJUDICE**.  
13 3. All pretrial and trial dates and deadlines are **STRICKEN**.  
14 4. Pending motions, if any, are **DENIED AS MOOT**.

15 The District Court executive is directed to enter this order, provide copies to  
16 counsel, U.S. Probation, and to the United States Marshal, and close the file.

17 DATED July 17, 2025.

18   
19 \_\_\_\_\_  
20 REBECCA L. PENNELL  
UNITED STATES DISTRICT JUDGE